Tenaga Nasional Bhd v Majlis Daerah Dungun

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–6 OF 2006 (W)
ALAUDDIN PCA, ARIFIN ZAKARIA CJ (MALAYA), NIK HASHIM, ABDUL AZIZ MOHAMAD AND HASHIM YUSOFF FCJJ
21 MAY 2009

Local Government — Rates — Annual value — Objection to proposed annual value — Negotiations to reduce rate payable — Failure to object to assessment — Whether appellant precluded from challenging determination of annual value and rate on any ground — Whether 'plant and machinery' should be included in calculating annual value of holding — Whether applying estoppel against respondent would have effect of nullifying provisions of the Local Government Act 1976 — Whether ultra vires for respondent to enter into agreement with appellant to abide by decision of Tribunal — Local Government Act 1976 ss 2, 144(1), (2), (3) & (5)

On 1 September 1990, the Sultan Ismail Paka Power Station ('the power station'), situated within the jurisdiction of the Majlis Daerah Dungun ('the respondent'), became the property of Tenaga Nasional Bhd ('the appellant'), a public listed company. The land on which the power station stood and some machinery on the land were classified as a 'holding' under the Local Government Act 1976 ('the LGA'). When the appellant became the owner of the holding the respondent decided to assess and collect rates in respect of the holding. The respondent assessed the annual value of the holding as RM123m and accordingly on 13 May 1991, the respondent issued a notice under s 144(2) of the LGA to amend the 1988 Valuation List in respect of the holding. Consequently the rate payable by the appellant ratepayer was assessed to be RM6,150,000, which was 5% of the annual value. The appellant was of the view that the annual value of the holding was excessive and was ultra vires because it contravened proviso (b) in s 2 of the LGA. The main dispute between the parties centred on the issue as to whether 'plant and machinery' in the holding should be included in the 'annual value' under s 2 of the LGA. The appellant as an aggrieved person was allowed to make an objection to the assessment under s 144(3) of the LGA but it chose not to make any objection. Instead of such an objection and the processes that follow upon such an objection, the appellant and respondent entered into a series of negotiations through meetings and letters with a view to reaching an amicable settlement. These negotiations which commenced sometime in 1991, went on until 1996 without reaching a definite settlement. Finally on

A 17 June 1996, the respondent served on the appellant a demand for payment of arrears of the rate originally imposed. This was followed by the present suit instituted by the respondent against the appellant to recover the arrears. By way of this suit the respondent sought to claim RM33,825,000 as arrears of rates for the second half of 1991 and for the years 1992 to 1996. As the B appellant had been paying rates at RM400,000 per year in respect of the holding, amounting to RM2,200,000 during the period 1991 to 1996, the respondent deducted this sum from the total of RM33,825,000, thereby claiming RM31,625,000 for the same period. There was a counterclaim by the appellant wherein it claimed that it had overpaid the rate payable for the C period in question, based on its own valuer's opinion of the annual value and counterclaimed a refund of the overpayment. In its statement of claim the respondent specifically pleaded that the appellant's failure to object to the assessment under s 1443(3) of the LGA meant that it was deemed to have admitted liability to pay the rate as notified by the notice of amendment, ie D the rate of RM6,150,000 per year. In reply the appellant pleaded that in the negotiations between the parties, the respondent had agreed that the rate for the holding was to be based on principles of evaluation enunciated by the Tribunal, which was set up to determine the amount of rates that were payable in respect of other power stations belonging to the appellant in the E areas of 5 other local authorities, and that therefore the respondent was estopped from claiming the rates that it was presently claiming. The appellant further pleaded its failure to object under s 144(3) of the LGA was not applicable on the facts of this case because the appellant had a legitimate expectation that the respondent would act in accordance with the agreement F to apply the principles of valuation established by the Tribunal. The respondent maintained that estoppel could not operate to defeat the exercise of its powers as conferred by the LGA. The decision of the High Court proceeded on a finding of fact that the appellant had agreed to abide by the decision of the Tribunal, which had ruled that the enhanced value of the G holding on account of the machinery should not be taken into consideration in assessing the annual value, and that therefore the respondent was required to amend the notice to exclude plant and machinery in its calculation of the annual value of the holding. However, the trial judge did not make his own finding on the interpretation of proviso (b) of s 2 of the LGS as to the H definition of annual value. When the High Court dismissed the respondent's claim with costs, it appealed to the Court of Appeal. The Court of Appeal allowed the respondent's appeal with costs and agreed with the High Court that the appellant's counterclaim ought to be dismissed. The Court of Appeal took the view that when the appellant failed to raise an objection to the I assessment under s 144(3) of the LGA, it had no further rights to challenge the determination of the annual value and rate on any ground. The Court of Appeal also went on to find that that the ground of estoppel which the trial judge used to allow the appellant's challenge could not be used against the respondent as it was a public authority and estoppel would have the effect of

nullifying the provisions of the LGA. When leave was granted to appeal, the appellant proceeded by way of this appeal to raise 11 questions for this court's determination. These questions gave rise to the issues as to whether the appellant's failure to object under s 144(3) of the LGA precluded the appellant from challenging the determination of the annual value and rate on any ground, whether the ground of estoppel could be invoked against a local authority when applying estoppel against the respondent would have the effect of nullifying the provisions of the LGA and whether it would be an act of ultra vires for the respondent to enter into an agreement with the appellant to abide by the decision of the Tribunal, as to the rates payable.

Held, allowing the appeal with costs here and below:

(1) (per **Abdul Aziz Mohamad FCJ**) The case of *The Mayor, Aldermen and Councillors of the Metropolitan Borough of Stepney v John Walker and Sons Ltd* [1934] AC 365, (the *John Walker*'s case) was the principal authority relied on by the Court of Appeal in holding that the door to challenge the respondent's decision was closed. However, the appeal procedure in the *John Walker*'s case was an elaborate mechanism which was not similar to the statutory procedure for amending a valuation list. In fact the decision in the *John Walker*'s case was a decision on the special provisions of an English legislation that are not found in this country. All the provisions of the LGA that constitute the process of amendment of a valuation list, ie s 144(1), (2), (3) and (5) of the LGA, are simple and straightforward. As it was a simple procedure, no undesirable consequences would arise if the Valuation List in this case was further amended to state the proper annual value and annual rate for the appellant's holding pursuant to the agreement reached between the appellant and the respondent. Therefore, the door was not closed to the appellant to question the validity of the rates claimed by the respondent (see paras 18, 25–26, 29–30 & 35).

(2) (per **Abdul Aziz Mohamad FCJ**) It was a finding of fact by the trial judge that at the tribunal the parties had reached an agreement. In fact the Court of Appeal had also accepted that there was such an agreement. Thus, it was not ultra vires the LGA for the respondent to agree to abide by the decision of the Tribunal in determining the rate for the appellant's holding. To determine the rate it was necessary to determine the annual value and the LGA did not lay down any particular route to be used when determining the annual value. The dispute as to the application of proviso (b) of s 2 of the LGA to the definition of annual value was to be decided by the Tribunal and the respondent was not prohibited by the doctrine of ultra vires from agreeing to adopt a particular course of action to arrive at the correct

annual value and annual rate. Contrary to the opinion of the Court of Appeal there are no provisions in the LGA that would be nullified by the agreement. The agreement was not to reduce the amount of the rate that the appellant was bound to pay but to arrive at the correct amount. The negotiations that the parties entered into and the agreement reached in this case were perfectly in order legally and the respondent should not renege on the agreement (see paras 37–38 & 41).

(3) (per **Hashim Yusoff FCJ** dissenting) Since there are specific provisions under s 145(1) and (2) of the Act to enable a dissatisfied ratepayer to appeal in the manner prescribed, any failure to comply with the same would necessarily preclude the ratepayer from resorting to any other method of appeal, such as coming to court. The appellant should have exhausted his legal remedy provided by law first before he came to court to seek his redress. Further, since it was the appellant's failure in the first place to pay up its arrears of rates that necessitated the respondent's action to proceed by way of court proceedings to recover its claim, it would not be fair for the appellant to say that it was only defending a claim against it. If all ratepayers were to act in the same manner as the appellant then it would lead to the courts being flooded with recovery suits by the various local authorities against their defaulting ratepayers for recovery of arrears and also result in the local authorities not being in a financial position to provide general services, which could not be the intention of Parliament. Thus, the Court of Appeal was right in holding that the sum specified in the notice issued by the respondent was final and conclusive because the appellant failed to appeal in the manner expressly provided for in ss 144 and 145 of the LGA (see paras 10–11 & 14).

(4) (per **Hashim Yusoff FCJ** dissenting) It would appear from the chronology of events that the various meetings and correspondence between the appellant and the respondent did not end up in any agreement being drawn up. Thus, when a statutory duty is imposed on a corporation to carry out certain acts in the interest of the public, estoppel cannot operate to prevent it from performing its duty and asserting its legal rights accordingly (see paras 20–21 & 23).

[Bahasa Malaysia summary

Pada 1 September 1990, Stesen Janakuasa Sultan Ismail Paka ('stesen janakuasa tersebut'), yang terletak dalam bidang kuasa Majlis Daerah Dungun ('responden'), menjadi milik Tenaga Nasional Bhd ('perayu'), sebuah syarikat senaraian awam. Tanah di mana stesen janakuasa tersebut berdiri dan beberapa mesin atas tanah tersebut diklasifikasikan sebagai 'pegangan' di bawah Akta Kerajaan Tempatan 1976 ('AKT'). Apabila perayu menjadi

pemilik pegangan tersebut, responden memutuskan untuk menaksir dan memungut kadar-kadar berkaitan pegangan tersebut. Responden menaksir nilai tahunan pegangan tersebut sebanyak RM123 juta dan pada 13 Mei 1991, responden mengeluarkan notis di bawah s 144(2) AKT untuk meminda Senarai Penilaian 1988 berikutan dengan pegangan tersebut. Berikutan itu, kadar yang perlu dibayar oleh perayu pembayar cukai pintu ditaksirkan pada RM6,150,000, yang merupakan 5% daripada nilai tahunan. Perayu berpendapat bahawa nilai tahunan pegangan tersebut adalah berlebihan dan ultra vires kerana bercanggahan dengan proviso (b) s 2 AKT. Pertikaian pokok antara pihak-pihak tertumpu pada isu sama ada 'loji dan mesin' dalam pegangan tersebut harus dinilai dalam 'nilai tahunan' di bawah s 2 AKT. Perayu sebagai pihak yang terkilan dibenarkan membuat bantahan terhadap pentaksiran tersebut dan seterusnya, perayu dan responden berunding melalui beberapa pertemuan dan surat menyurat bagi tujuan mencapai penyelesaian yang wajar. Rundingan-rundingan ini yang bermula dari sekitar 1991, berlanjutan sehingga 1996 tanpa mencapai penyelesaian yang sepakat. Akhirnya, pada 17 Jun 1996, responden menyerahkan kepada perayu tuntutan bayaran tunggakan pada kadar yang asalnya dikenakan. Kemudian diikuti dengan tindakan ini yang dimulakan oleh responden terhadap perayu untuk mendapatkan bayaran tertunggak. Menerusi tindakan ini responden menuntut RM33,825,000 sebagai tunggakan kadar bagi bahagian kedua tahun 1991 dan bagi tahun 1992 hingga 1996. Memandangkan perayu membayar kadar sejumlah RM400,000 setahun berikutan pegangan tersebut, berjumlah RM2,200,000 dari tahun 1991 hingga 1996, responden menolak jumlah ini daripada RM33,825,000, oleh itu menuntut RM31,625,000 bagi tempoh yang sama. Terdapat tuntutan balas daripada perayu di mana perayu mendakwa bahawa perayu telah terlebih bayar kadar yang kena bayar bagi tempoh yang dipertikaikan, berdasarkan pandangan penilainya sendiri terhadap nilai tahunan dan menuntut balas pemulangan kadar yang telah terlebih bayar itu. Dalam penyata tuntutannya, responden secara khususnya memplid bahawa kegagalan perayu membantah penaksiran tersebut di bawah s 144(3) AKT bermaksud bahawa perayu mengakui tanggungjawab untuk membayar kadar seperti yang dimaklumkan oleh notis pindaan, iaitu kadar RM6,150,000 setahun. Dalam balasannya, perayu menyatakan bahawa dalam perbincangan-perbincangan antara pihak-pihak, responden bersetuju bahawa kadar pegangan tersebut adalah pada dasar prinsip penilaian yang dijelaskan oleh tribunal, yang ditubuhkan untuk menentukan jumlah kadar yang perlu dibayar bagi stesen-stesen janakuasa yang lain yang menjadi milik perayu di lima kawasan pihak berkuasa tempatan, dan responden diestop daripada menuntut kadar yang kini dituntutnya. Perayu selanjutnya memplid kegagalannya membantah di bawah s 144(3) AKT tidak boleh diguna pakai atas fakta-fakta kes ini kerana perayu mempunyai jangkaan sah bahawa responden akan bertindak mengikut persetujuan untuk mengaplikasikan prinsip-prinsip penilaian yang ditetapkan oleh tribunal. Responden

menegaskan bahawa estopel tidak boleh berfungsi untuk mengatasi pelaksanaan kuasanya seperti yang diberikan oleh AKT. Keputusan Mahkamah Tinggi adalah berdasarkan penemuan fakta bahawa perayu bersetuju untuk menurut keputusan tribunal, yang mana telah memutuskan bahawa nilai penambahan pegangan berikutan dengan mesin tersebut tidak harus diambil kira dalam menaksirkan nilai tahunan, dan responden dikehendaki meminda notis tersebut dengan tidak memasukkan loji dan mesin dalam pengiraan untuk nilai tahunan pegangan tersebut. Walau bagaimanapun, hakim bicara tidak membuat penemuannya sendiri dalam pentafsiran proviso (b) s 2 AKT bagi tafsiran nilai tahunan. Apabila Mahkamah Tinggi menolak tuntutan responden dengan kos, responden merayu ke Mahkamah Rayuan. Mahkamah Rayuan membenarkan rayuan responden dengan kos dan bersetuju dengan Mahkamah Tinggi bahawa tuntutan perayu seharusnya ditolak. Mahkamah Rayuan berpendapat bahawa apabila perayu gagal membantah terhadap penaksiran tersebut di bawah s 144(3) AKT, perayu tiada hak untuk selanjutnya mencabar penentuan nilai tahunan dan kadar atas sebarang alasan. Mahkamah Rayuan juga seterusnya mendapati bahawa alasan estopel yang mana hakim bicara telah membenarkan alasan ini apabila plaintif mempersoalkannya, tidak boleh diguna pakai terhadap responden kerana responden merupakan pihak berkuasa awam dan estopel tiada kesan membatalkan peruntukan-peruntukan AKT. Apabila kebenaran diberikan untuk rayuan, perayu mengemukakan dalam rayuan ini 11 persoalan untuk ditentukan oleh mahkamah ini. Persoalan-persoalan ini membangkitkan isu-isu sama ada kegagalan perayu membantah di bawah s 144(3) AKT menghalang perayu mencabar penentuan nilai tahunan dan kadar atas sebarang alasan, sama ada alasan estopel boleh diguna pakai terhadap pihak berkuasa tempatan apabila mengguna pakai estopel terhadap responden akan mengakibatkan pembatalan peruntukan-peruntukan AKT dan sama ada akan menjadi tindakan ultra vires bagi responden untuk menandatangani perjanjian dengan perayu untuk mematuhi keputusan tribunal, bagi kadar-kadar yang perlu dibayar.

Diputuskan, membenarkan rayuan dengan kos di mahkamah ini dan Mahkamah Rayuan:

(1) (oleh **Abdul Aziz Mohamad HMP**) Kes *The Mayor, Aldermen and Councillors of the Metropolitan Borough of Stepney v John Walker and Sons Ltd* [1934] AC 365, (kes *John Walker*) merupakan autoriti utama yang dirujuk oleh Mahkamah Rayuan dalam memutuskan bahawa pintu untuk mencabar keputusan responden telah ditutup. Namun begitu, prosedur rayuan dalam kes *John Walker* merupakan mekanisma yang rumit yang tidak sama dengan prosedur statutori untuk meminda senarai penilaian tersebut. Malah, keputusan dalam kes *John Walker*

merupakan keputusan berdasarkan peruntukan-peruntukan khusus perundangan Inggeris yang tiada di negara ini. Kesemua peruntukan AKT yang mengandungi proses pindaan senarai penilaian, iaitu ss 144(1), (2), (3) dan (5) AKT, adalah ringkas dan jelas. Kerana prosedur itu ringkas, tiada kesan yang tidak diingini akan berbangkit jika senarai penilaian dalam kes ini dipinda selanjutnya untuk menyatakan nilai tahunan yang betul dan kadar tahunan bagi pegangan perayu berikutan dengan persetujuan yang dicapai antara perayu dan responden. Oleh itu, pintu tidak tertutup kepada perayu untuk mempersoalkan kesahihan kadar-kadar yang dituntut responden (lihat perenggan 18, 25–26, 29–30 & 35).

(2) (oleh **Abdul Aziz Mohamad HMP**) Adalah merupakan penemuan fakta oleh hakim bicara bahawa ketika di tribunal pihak-pihak telah mencapai persetujuan. Malah Mahkamah Rayuan juga menerima bahawa wujudnya persetujuan tersebut. Maka, adalah tidak ultra vires kepada AKT untuk responden bersetuju mematuhi keputusan tribunal dalam menentukan kadar pegangan perayu. Untuk menentukan kadar tersebut adalah perlu untuk menentukan nilai tahunan dan AKT tidak memperuntukkan sebarang cara khusus untuk diguna pakai apabila menentukan nilai tahunan. Pertikaian terhadap penggunaan proviso (b) s 2 AKT bagi tafsiran nilai tahunan akan diputuskan oleh tribunal dan responden tidak dihalang oleh doktrin ultra vires untuk bersetuju menerima suatu pelaksanaan tindakan untuk mencapai nilai tahunan yang tepat dan kadar tahunan. Berbeza dengan pendapat Mahkamah Rayuan, tiada peruntukan dalam AKT yang akan dibatalkan dengan persetujuan itu. Persetujuan tersebut bukan untuk mengurangkan jumlah kadar yang perayu wajib bayar tetapi untuk mencapai jumlah yang tepat. Rundingan-rundingan yang berlangsung antara pihak-pihak dan juga persetujuan yang tercapai adalah sah dan responden tidak harus memungkiri persetujuan tersebut (lihat perenggan 37–38 & 41).

(3) (oleh **Hashim Yusoff HMP** menentang) Memandangkan adanya peruntukan-peruntukan khusus di bawah s 145(1) dan (2) AKT yang memberi peluang kepada pembayar cukai pintu yang tidak berpuas hati untuk merayu menurut apa yang diperuntukkan, sebarang kegagalan untuk mematuhinya akan tentunya menghalang pembayar cukai pintu daripada menggunakan apa-apa cara rayuan, seperti menggunakan mahkamah. Perayu seharusnya telah menggunakan kesemua remedi yang diperuntukkan undang-undang sebelum dia datang ke mahkamah untuk suatu redress. Malah, memandangkan adalah kegagalan perayu untuk membayar tunggakan kadar yang menyebabkan responden mengambil tindakan mahkamah untuk mendapatkan tuntutannya, adalah tidak adil bagi perayu menyatakan bahawa perayu hanya membela akan tuntutan yang dibuat terhadapnya. Jika kesemua pembayar cukai pintu bertindak sedemikian, maka mahkamah akan

dibanjiri dengan tindakan-tindakan pengembalian hak oleh pihak-pihak berkuasa tempatan yang tiada kedudukan kewangan untuk membekalkan perkhidmatan awam, yang mana bukanlah niat Parlimen. Maka, Mahkamah Rayuan adalah betul apabila memutuskan jumlah yang ditetapkan dalam notis yang dikeluarkan oleh responden merupakan yang muktamad dan kukuh kerana perayu gagal merayu seperti yang diperuntukkan dalam ss 144 dan 145 AKT (lihat perenggan 10–11 & 14).

(4) (oleh **Hashim Yusoff HMP** menentang) Daripada rangkaian kejadian jelas menunjukkan bahawa pertemuan-pertemuan dan surat menyurat antara perayu dan responden tidak berakhir dengan sebarang perjanjian. Maka, apabila tanggungjawab statutori diletakkan ke atas suatu perbadanan untuk melaksanakan tindakan-tindakan tertentu untuk kepentingan umum, estopel tidak boleh berfungsi untuk menghalangnya daripada melaksanakan tanggungjawabnya dan juga menerapkan haknya di sisi undang-undang (lihat perenggan 20–21 & 23).]

Notes

For cases on rates of annual value, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) paras 137–139.

Cases referred to

Corporation of the City of Victoria v Bishop of Vancouver Island [1921] 2 AC 384, PC (folld)

Majlis Perbandaran Seberang Perai v TNB [2005] 1 MLJ 1, FC (refd)

Maritime Electric Co Ltd v General Dairies Ltd [1937] AC 610, PC (refd)

Mayor, Aldermen and Councillors of the Metropolitan Borough of Stepney, The v John Walker & Sons, Ltd [1934] AC 365, HL (not folld)

Public Textiles Bhd v Lembaga Letrik Negara [1976] 2 MLJ 58, FC (refd)

Rex v City of London Assessment Committee [1907] 2 KB 764, KBD (refd)

Southend-on-Sea Corporation v Hodgson (Wickford) Ltd [1961] 2 All ER 46, QBD (refd)

Yee Seng Rubber Co Sdn Bhd v The Commissioner of Kuala Lumpur [1972] 2 MLJ 21, HC (refd)

Wandsworth London Borough Council v Winder [1984] 3 All ER 976, HL (refd)

Legislation referred to

Electricity Act 1949
Electricity Supply (Successor Company) Act 1990 s 3
Factories and Machinery Act 1967 s 3
Federal Constitution art 156
Limitation Act 1953 s 6(1)(d)

Local Government Act 1976 ss 2, 2 proviso (b), 137(2), (3), 144, 144(1), (1)(a), (2), (3), 145, 145(1), (5), 156, 158, 158(1), Part XV
Municipal Act (Statutes of British Columbia 1914) [UK] ss 197, 216, 230
Rating and Valuation (Apportionment) Act 1928 [UK]
Rules of the High Court 1980 O 14, O 53
Town Board Enactment of FMS (Cap 137)
Valuation (Metropolis) Act 1869 [UK]

Appeal from: Civil Appeal No W-01–101 of 2004 (Court of Appeal, Putrajaya)

Cyrus V Das (Goh Peng Hong and Shamsul Bahrin Manaf with him) (Bakar & Partners) (Shook Lin & Bok) for the appellant.
Tommy Thomas (Alan Adrian Gomez with him) (Tommy Thomas) for the respondent.

Abdul Aziz Mohamad FCJ:

[1] This case concerns the rates payable under the Local Government Act 1976 ('LGA') in respect of the Sultan Ismail Paka Power Station ('the power station') which is situated within the jurisdiction of the Majlis Daerah Dungun ('MDD'), a local authority under the LGA and the present respondent, and which comprises land of some 80 hectares and a number of buildings, including a generating power plant, and some machinery on the land. The land and the buildings on it are a 'holding' under the LGA. The holding originally belonged to the Lembaga Letrik Negara ('LLN'), a statutory body under the Electricity Act 1949. The power station was completed in 1986 and commenced operation to generate electricity in 1987.

[2] As the LLN was a public authority under the Federal Constitution, and as the holding was occupied for public purposes, by virtue of art 156 of that Constitution it was not liable to pay local rates in respect of the holding but had to make contribution in aid of those rates, the amount of which was, in default of agreement, to be determined by a tribunal.

[3] On 1 September 1990 all property, rights and liabilities of the LLN became, by operation of s 3 of the Electricity Supply (Successor Company) Act 1990, those of Tenaga Nasional Bhd ('TNB'), a public-listed company and the present appellant. Hence on that date the power station became the property of TNB. On the basis that TNB was not a public authority and therefore the said art 156 did not apply to it and it was liable to pay local rates, MDD decided to assess and collect rates in respect of the holding. MDD appointed a firm of valuers to assess the annual value of the holding

and accepted the firm's assessment at RM123m. MDD assessed the annual rate in respect of the holding at 5% of the annual value, which came to RM6,150,000.

[4] Accordingly, on 13 May 1991 MDD issued, under s 144(2) of the LGA, a notice that MDD intended to amend, on 27 June 1991, the valuation list, which was the still extant 1988 Valuation List, by including therein, in respect of the holding, the said annual value and annual rate with effect from 1 July 1991.

[5] To TNB the annual value of RM123,000,000 for the holding was excessive, and the assessment of the annual value at that amount was ultra vires for contravening proviso (b) to the definition of 'annual value' in s 2 of the LGA and was therefore null and void, and so therefore was the resulting annual rate. That proviso provides as follows:

> (b) in estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes —
>
> (i) the making of any article or part of an article;
>
> (ii) the altering, repairing, ornamenting or finishing of any article;
>
> (iii) the adapting for sale of any article,
>
> the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration …

To TNB, the annual value as assessed included, contrary to the proviso, the enhanced value given to the holding from the presence of machinery for the generation of electricity and the generation of electricity was the making of electricity, and electricity was an 'article' for the purposes of the proviso.

[6] According to s 144(3) of the LGA, read with s 142(1)(a), any person aggrieved by the amendment of the valuation list on the ground that 'any holding for which he is rateable is valued beyond its rateable value' may make objection to the local authority not less than ten days before the time fixed in the notice. In the case of TNB, the time to make objection was not less than ten days before 27 June 1991, but it chose not to make any objection under the section. So MDD issued to TNB a bill dated 5 August 1991 for the rates for the second half of 1991 to the tune of RM3,075,000, which was half of the annual rate of RM6,150,000.

[7] If TNB had made objection under s 144(3) and was dissatisfied with MDD's decision, TNB could, under s 145(1), appeal to the High Court, but would have to pay, with the filing of the appeal, the amount of the rate

appealed against. From the High Court, TNB could appeal further to the Federal Court under s 145(5) on questions of law. A

[8] Instead of an objection under s 144(3) and the processes that follow upon such an objection, there ensued a series of negotiations through meetings and letters between TNB's side and MDD's side concerning the rate, which MDD's counsel, at p 6 of his written submission in this appeal, said were 'with a view to reaching an amicable settlement'. The negotiations commenced sometime in 1991 and went on until 1996 and ended, without reaching any definite settlement in the form of a rate acceptable to both sides, when, on 17 June 1996, MDD served on TNB a demand for payment of arrears of the rate originally imposed. This was followed by a suit brought by MDD on 5 July 1996 to recover the arrears. B C

[9] MDD's claim, which was made by virtue of s 156 of the LGA, was for arrears of rates for the second half of 1991 and for the years 1992 to 1996. At RM6,150,000 per year, the rates for that period came to RM33,825,000. For some reason which had to do with the negotiations, TNB had throughout the same period been paying rates in respect of the holding at RM400,000 per year. The total amount paid was RM2,200,000, which MDD deducted from the total of RM33,825,000, thereby claiming RM31,625,000 for that period. MDD also, by an amendment of 2004, claimed rates at RM6,150,000 per year for subsequent years. MDD specifically pleaded that by TNB's failure to make objection under s 144(3) of the LGA, TNB was deemed to have admitted its liability to pay rates as notified by the notice of amendment of 13 May 1991 under s 144(2). D E F

[10] TNB's pleaded defence was that MDD's entire claim was unlawful and invalid on four grounds, but the principal grounds were the aforesaid alleged contravention of proviso (b) to the definition of 'annual value', and a contention that MDD's claim based on the notice under s 144(2) had been cancelled and superseded by a bill dated 5 February 1992 and by a letter dated 12 December 1995. That bill and that letter were part of the aforesaid negotiations. G H

[11] In answer to MDD's plea regarding TNB's failure to make objection under s 144(3), TNB's pleaded reply amounted to raising an estoppel against MDD arising from the aforesaid negotiations. It concerned a tribunal set up pursuant to art 156 of the Federal Constitution to determine the amount of contribution in aid of rates that was payable in respect of other power stations belonging to TNB in the areas of five other local authorities, including the Majlis Perbandaran Seberang Perai, in respect of the period when they belonged to TNB's predecessor, LLN. TNB pleaded that in the negotiations the parties had agreed that the rate for the holding in Paka was to be based I

on principles of evaluation enunciated by the tribunal and therefore MDD was estopped from claiming the rates that it was presently claiming. TNB also pleaded that MDD's point about failure to make objection under s 144(3) was not applicable on the facts of this case because TNB had a legitimate expectation that MDD would act in accordance with its agreement to apply the principles of valuation established by the tribunal. MDD's reply to this was that estoppel could not operate to defeat the exercise by MDD of powers and discretions conferred on it by the LGA.

[12] There was a counterclaim by TNB. TNB had appointed a valuer to value the holding. TNB pleaded that the valuer had applied strictly the principles of valuation of a power station as enunciated by the tribunal. The valuer assessed the annual value of the holding at RM4,101,780 and the annual rate for the holding at RM205,089, being 5% of the annual value. The rates payable by TNB for the second half of 1991 and for the years 1992 to 1996 should therefore have amounted to, as pleaded, RM1,025,446. As TNB had already paid RM2,200,000 for that period, TNB counterclaimed a refund of the overpayment of RM1,174,554. I notice that the pleaded figure RM1,025,446 is wrong. It should be RM1,127,790.30, so that the amount of the counterclaim should have been RM1,072,010.

[13] The learned trial judge, James Foong J (now FCJ), found, upon considering the testimonies of witnesses of both parties and certain documentary evidence pertaining to the negotiations, that although TNB did not make objection under s 144(3) of the LGA, 'indulgence was granted by (MDD) to (TNB) to discuss (TNB's) objection for the inclusion of plant and machinery in the Power Station in the notice when ascertaining annual value', and that 'parties have entered into an agreement to delay the effect and enforcement of the notice to subject it to the ruling of the (tribunal) on whether to exclude plant and machinery in the calculation of annual value'. He further said: 'The notice has been suspended to await the (tribunal's decision). And since such decision has been given, (MDD) is required to amend the notice to exclude plant and machinery from the calculating [sic] annual value. This was what is agreed between the parties. (MDD) cannot (renege) on this'. Those are findings of fact by the trial court.

[14] The tribunal's decision had been pronounced on 3 October 1994, while the negotiations were ongoing. It was a decision in Case No 1/94 in respect of the Majlis Perbandaran Seberang Perai. The learned judge cited the following from the draft of the decision:

> LLN has installed various machinery on the land for the purposes of manufacturing products for generating electricity. These machineries, although attached securely to the land, are nevertheless machineries within the meaning of s 2 of the Local Government Act 1976. As such the enhanced value of the

machineries should not be taken into consideration in assessing the annual value of the property and ought to be exempted. A

[15] The learned judge dismissed MDD's claim with costs upon this conclusion: 'The notice at the present moment is burdened by the inclusion of plant and machinery, which, by agreement, ought to be excluded. Thus it has no effect for enforcement on (TNB).' B

[16] It is to be noted that the learned judge did not make his own finding on the interpretation of proviso (b) to the definition of 'annual value'. His decision proceeded on a finding of fact that TNB had agreed to abide by the decision of the tribunal which, in the event, ruled that the enhanced value of the holding on account of the machinery should not be taken into consideration in assessing its annual value. C

D

[17] The learned judge also did not make a finding as to the correct annual value or rate payable. He said that the court was not, at that stage, the proper forum for it. He said that the procedure provided by the LGA had to be exhausted. MDD had to amend the valuation list again under s 144(1) by giving for the holding an annual value that does not take into consideration the presence of machinery used for the generation of electricity, and the rate based on such annual value, and then give TNB notice under s 144(2) of the intention to amend. If TNB is nonetheless aggrieved by the amendment, it should make objection under s 144(3), and if TNB is dissatisfied with MDD's decision on the objection, TNB could then appeal to the High Court under s 145. Also for the reason that the High Court was not, at that stage, the proper forum for determining the proper annual value and annual rate, the learned judge dismissed with costs TNB's counterclaim, which was based on its own valuer's opinion of the annual value. E F

G

[18] MDD appealed to the Court of Appeal. TNB cross-appealed on its counterclaim. The Court of Appeal (Mokhtar Sidin, Mohd Ghazali Mohd Yusoff JJCA, Augustine Paul JCA (now FCJ)) took the view that the learned trial judge's sole reason for dismissing MDD's claim, which relied primarily on the fact that in the course of the negotiations the parties had agreed to abide by the decision of the tribunal, amounted to the admission of an estoppel against MDD. As I construe the entire judgment of the Court of Appeal, I would summarise it as follows. By TNB's failure to make objection under s 144(3) of the LGA to the amendment of the valuation list, the door was closed to TNB to challenge the annual value and rate determined and imposed by the amendment, on any ground, not even on the ground of estoppel on which the learned trial judge dismissed MDD's claim. The principal authority relied on by the Court of Appeal for this is *The Mayor, Aldermen and Councillors of the Metropolitan Borough of Stepney v John Walker* H I

& Sons, Ltd [1934] AC 365 ('the *John Walker*'s case'). But even if the door was not closed to TNB, the Court of Appeal found that the ground of estoppel on which the learned trial judge entertained and allowed TNB's challenge could not be set up against MDD because 'to admit estoppel against (MDD), it being a public authority, would have the effect of nullifying the provisions of the (LGA)'. As to why the Court of Appeal said that it would have such an effect, it seems to me that it was because the LGA does not have a provision that allows an owner of a holding to seek the reduction of a rate, which a local authority is under a statutory duty to impose, by way of entering into negotiations with the local authority, and therefore the negotiations that took place in this case, and the agreement to abide by the decision of the tribunal that arose from the negotiations, were 'prohibited by the doctrine of ultra vires'. For this, the Court of Appeal relied on *Public Textiles Berhad v Lembaga Letrik Negara* [1978] 2 MLJ 58.

[19] The Court of Appeal therefore allowed MDD's appeal with costs. The Court of Appeal also dismissed TNB's appeal but with no order as to costs.

[20] Leave was granted to TNB to appeal to this court on eleven questions. These are set out in the judgment of my learned brother Hashim Yusoff FCJ. None of them relates to TNB's counterclaim. TNB has abandoned question 7. Questions 1, 2 and 3 relate to the door-closed decision of the Court of Appeal, which, as I said, relied principally on the *John Walker*'s case. I will now deal with that aspect of the appeal.

[21] Against *John Walker*, TNB has set up various authorities, but the one that I think is closest in the circumstances to the present case is *Corporation of the City of Victoria v Bishop of Vancouver Island* [1921] 2 AC 384. The Bishop owned land on which stood a church building. The corporation had assessed municipal rates and taxes on the land for the years 1914–1918. Sections 216 and 230 of the Municipal Act cl 52 of the Statutes of British Columbia 1914, provided — and I quote the words of Lord Atkinson at p 395 since the actual contents of the sections do not appear in the report — 'that every person complaining of an 'error or omission in regard to himself' as having been wrongfully placed upon the assessment roll for general taxes shall have a right of appeal to a Court of Revision, and that the assessment roll as revised confirmed and passed by the Court of Revision except as so far as amended on appeal by one of the tribunals mentioned shall be deemed valid and binding on all persons concerned, notwithstanding any defect or error or mis-statement in the notice required or transcript of such notice'. The Bishop had taken no objection to the assessment rolls for those years and had not exercised his right of appeal under those sections, and the rolls were passed and confirmed by the Court of Revision, but he did not pay the rates and taxes. He instead brought an action against the corporation for a

declaration that no rates and taxes had been lawfully imposed on the land on the grounds that it was exempted from rates and taxes by virtue of s 197 of the 1914 Act, and for an injunction restraining the corporation from offering the lands for sale to recover the rates and taxes. The corporation counterclaimed for the unpaid rates and taxes.

[22] The Privy Council found that the land was exempted from rates and taxes. But, relying on the said ss 216 and 230, and as the Bishop had not objected to the assessment rolls or appealed under those provisions, it was 'seriously contended' on behalf of the corporation that the assessment rolls had become valid and binding on the Bishop and that he could not now be permitted to 'impeach their accuracy'. To that contention Lord Atkinson, who delivered the judgment of the Privy Council, said as follows:

> … The same considerations apply to each of these two sections. But these sections are merely machinery sections dealing with irregularities, mistakes and errors occurring in the drawing up, shaping and forming of the assessment rolls, and do not by any means empower the Corporation or its officers to assess and tax any kind of property expressly or impliedly exempted from taxation by the provisions of these very statutes from 1914–1918, both inclusive. To hold that they did so would amount to holding that the Corporation and its officers had the power of repealing express provisions of these statutes.
>
> The whole question comes back to the proper construction of sub-s 1 of s 197 of the Act of 1914. If according to the true construction of that section the land upon which the cathedral stands is exempted from taxation, then if the Corporation or its officers attempt through the medium of these machinery sections to assess and tax it, their act is ultra vires and illegal, and the respondent is not disabled from assailing it despite the terms of their assessment rolls. In Their Lordships' view these sections in no way disentitled the respondent from insisting on the contention that the ground on which the cathedral stands is exempted from general taxation.

[23] So the Bishop obtained the declaration and injunction that he sought and the corporation failed in its counterclaim. The same result in favour of the Bishop would have ensued had the Bishop not brought the action but, instead, as happened in the present case, the corporation had sued the Bishop to recover the unpaid rates and taxes and the Bishop had claimed in his defence that they had been unlawfully imposed.

[24] It was submitted on behalf of MDD that the *City of Victoria*'s case does not assist TNB in any manner. Several specific reasons were given. First, ss 216 and 230 were not reproduced in full. But the essential effect of these sections were stated by Lord Atkinson. Secondly, as the sections have not been reproduced in full, it is not known whether there was a statutory right of appeal under the 1914 Act. But Lord Atkinson said there was a right of

appeal to the Court of Revision. Thirdly, under s 145(1) of our LGA, upon filing an appeal to the High Court from the decision of a local authority on an objection under s 144, the amount of the rate appealed against has to be paid, but it is not known whether there was such a provision in the 1914 Act of British Columbia. I have not been impressed by the reliance placed on MDD's behalf on the fact of having to pay the rate upon appealing as a factor for denying a person who has not made objection to the rating authority an opportunity to challenge a rate on grounds of illegality. Lastly, the *City of Victoria*'s case was not a judicial review case. But neither is the present case. I find that MDD's reasons against the application of the *City of Victoria*'s case to the present case are weak reasons, and I would apply it to the present case.

[25] But why do I prefer the *City of Victoria* to *John Walker* as an authority to follow in this case? The reason is the very reason why it was said on behalf of MDD, by way of capping the specific reasons, that the *City of Victoria* ought not to be followed. It was said: 'The Privy Council decision was thus a decision on the special circumstances of a colonial legislation which is not found in Malaysia.' It is rather the decision in *John Walker* that I would say is a decision on the special provisions of an English legislation that are not found in this country. Before I explain why I would say so, let me briefly set out the provisions of the LGA relating to the process of amendment of a valuation list because there is a suggestion in para 16 of the written submission on behalf of MDD that *John Walker* is persuasive because the rating provisions in the LGA are modelled on English statutes. These provisions of the LGA are those cited on behalf of MDD itself. Most of them I have mentioned. Provisions relating to the amendment of a valuation list are the provisions cited because it is through the amendment of the 1988 Valuation list that the rate on TNB's holding was imposed.

[26] By s 144(1), the valuation officer is empowered, for any of the reasons stated therein, to amend the valuation list at any time. It provides that rates shall be payable in respect of the holding in question in accordance with the valuation list as so amended. Section 144(2) requires the giving, to all persons interested in the amendment, of a time at which the amendment is to be made. Section 144(3) gives the right to make objection in writing to the local authority to any person aggrieved by the amendment on any of the grounds specified in s 142. Section 144(5) requires the amendment to be confirmed by the local authority. Section 145(1) gives a right of appeal to the High Court to any person dissatisfied with the decision of the local authority on his objection made under s 144(3) and requires that with the filing of the appeal the amount of the rate appealed against be paid to the local authority. Section 145(5) provides for a further appeal to the Federal Court. Those are all the provisions of the LGA that constitute the process of amendment of a valuation list. It is a simple and straightforward process.

[27] The *John Walker*'s case was a case where the owners, a company, of four hereditaments, after the Quinquennial Valuation List 1930 had been finally approved and having failed to avail themselves of various opportunities afforded by the Valuation (Metropolis) Act 1869 to object or appeal, sought an order of mandamus directing the rating authority to insert in Part II of the List the four hereditaments which were in Part I on the ground that they were industrial hereditaments. The advantage in a hereditament being in Part II was that the rate under Part II was lower than under Part I. The application was made after it became clear in law, through a process which it is not necessary to explain, that the hereditaments were industrial hereditaments and should be in Part II. The passage from that case that the Court of Appeal relied on in the present case was the following passage from the opinion of Lord Warrington of Clyffe, at pp 380 and 381:

> … In the Act of 1869 a complete and easily understood code is laid down for the purpose of enabling objections, either by a ratepayer or other specified persons, to acts of the Assessment Committee or the rating authority to be considered and dealt with either by those bodies themselves or, in case of necessity, by judicial authority. In the present case all necessary notices were given so that the respondents were at all times in a position effectually to obtain relief under the statutory provisions. It is difficult to understand why the respondents deliberately, as it is said, abstained from resorting to the statutory provisions. …
>
> In my opinion this is one of those cases in which the Legislature has provided suitable means whereby persons aggrieved by the action of the rating authorities can obtain the removal of that grievance, and I am of opinion that when that is so it must be inferred that those means are intended to be exclusive: see *Rex v City of London Assessment Committee* [1907] 2 KB 764. …

[28] It is tempting to read the last sentence of the passage, with its mention of the means provided for the removal of grievances as 'intended to be exclusive', as a statement of a rigid and absolute principle that a person who has a grievance about rates but does not avail himself of the means provided by statute to obtain redress cannot ever by whatever other means and on whatever grounds question the rates. But it is necessary to read the leading judgment of Lord Wright to see that the decision of the House of Lords on the consequence of failure to resort to the statutory means had to do with the procedure in the preparation of the Quinquennial Valuation List 1930 which was regulated by the Valuation (Metropolis) Act 1869.

[29] Lord Wright set out in outline the statutory procedure, including objections and appeals, in almost two pages and a half, pp 390–392. It is an involved procedure that I find tedious to read and not easy to visualise, and it will serve no useful purpose to set it out here. Lord Macmillan at p 387 described it as an 'elaborate mechanism of the statutory procedure'. It is

useful only to quote Lord Wright's reason for the pains taken to summarise the provisions. At p 392 Lord Wright said:

> I have summarised these provisions so far as relevant in order to show that the Legislature has carefully provided a machinery to ensure that the fullest opportunity is given to any person affected to make objection and to appeal; it is only after such opportunities have been afforded that the Valuation List is conclusive: the only provision made for alteration in consequence of any decision of the High Court is when it is the result of the hearing of a special case or on certiorari. It is of first importance that the list once finally settled should be conclusive, because of the number of persons and bodies whose position is affected by any particular change. No room is then left for interference by mandamus.

[30] It is important to note that 'because of the number of persons and bodies whose position is affected by any particular change', it became 'of first importance that the list once finally settled should be conclusive', with no room left 'for interference by mandamus', which was what the company sought in the case. As to who were the persons and bodies who would be affected by any particular change and how they would be affected, an idea may be obtained from the following earlier passage at p 391:

> … The only appeal which for present purposes may be noted is that to the Assessment Sessions, now to London Quarter Sessions. This right of appeal was given to any ratepayer or any Surveyor of Taxes and any Overseer who may feel aggrieved by any decision of the Assessment Committee on any objection made by him. The right of appeal is also given to Assessment Committees in the Metropolis or in the County in which is the parish and to other similar bodies. This wide right is given because the decision in regard to any particular hereditament may change the totals by which the various other interested parties are affected. …

[31] At p 387 Lord Macmillan said that the granting of the mandamus sought would be to interfere with the elaborate mechanism of the statutory procedure and would result in a confusion that had been described to the House of Lords 'in sufficiently deterrent terms'. At p 385 Lord Russell of Killowen said it 'would throw sand into the rating machinery which the statutes have provided'.

[32] At p 394 Lord Wright asked this question:

> … In my opinion the respondents completely failed to avail themselves of the rights of objecting or appealing given to them by the statutes in regard to any complaint: can they in these proceedings invoke the intervention of the court by way of mandamus?

[33] After noting 'the seriousness of the duties with which the court is

charged in dealing with an application for a writ of mandamus' and the wide discretion that judges have in exercising the remedial jurisdiction to grant the writ of mandamus because it is to enable justice to be done where there is no other means of obtaining justice, Lord Wright answered the question in the following manner at pp 395 and 396:

> The essence of the respondents' claim is that they have a right to have their hereditaments put into Part II of the List; but that right can only be based, if it exists at all, on the statutes I have summarised. … In the present case the right of the respondents to have their hereditaments placed in Part II can only arise under the various Acts, and these also define the corresponding obligations on the part of the rating authorities. The Acts in my opinion have comprehensively and exclusively provided machinery for their enforcement. This I regard as the fundamental matter for the determination of this case …

[34] Lord Wright at p 396 also referred to the decision of the Court of Appeal in *Rex v City of London Assessment Committee* [1907] 2 KB 764, which in the passage that I cited earlier Lord Warrington also referred to, and said that the case was 'directly in point on the main principle to be here applied and is correctly decided'. That was a case where it was the Corporation of London who, after neglecting to appeal, applied for a writ of mandamus to order the Assessment Committee to insert the rateable value of certain premises in the Valuation List because the Assessment Committee had failed in its statutory duty to do so. Lord Wright repeated the following words of Fletcher Moulton LJ as 'directly relevant here and most justly expressed':

> The Legislature has drawn up a code of procedure, which was intended to be a practical code, for ensuring the substantial accuracy of a valuation list. The preparation of the list is hedged round by various safeguards, which allow persons directly and primarily interested to be heard during the period of its preparation; and when the Legislature has decided what are proper safeguards sufficient to ensure in practice a proper valuation list, it is not for us to add new safeguards. …

[35] To my understanding it was because of the comprehensiveness and elaborateness of the mechanism of the statutory procedure, which was hedged around by various safeguards which the Legislature was seen as having decided to be sufficient to ensure a proper valuation list, and the undesirable consequences that would arise were the valuation list to be ordered by mandamus to be amended, that it was decided in *John Walker* that mandamus ought not to issue. The same cannot be said about the statutory procedure for amending a valuation list under the LGA. As I said, it is a simple and straightforward procedure and no undesirable consequences would arise if the valuation list in this case be further amended to state the proper annual value and annual rate for TNB's holding pursuant to the agreement reached between TNB and MDD. That is why in my judgment the *John Walker*'s case

ought not to be applied in this case to hold that the door was closed to TNB to question the rates claimed by MDD, and instead the *City of Victoria*'s case ought to be applied.

[36] MDD also relied on s 158(1) of the LGA which provides, inter alia: 'No valuation or rate assessed thereon, no charge or demand of any rate … shall be impeached or affected by reason of any mistake in … the amount of the rate assessed [on any holding] … where the requirements of this Part … are in substance and effect complied with'. But that section cannot apply in this case because it is the contention of TNB that the requirements of 'this Part', that is Part XV of the LGA, have not been complied with. TNB's contention is that MDD acted contrary to the prohibition of proviso (b) to the definition of 'annual value' in s 2. Since the term 'annual value' appears at various places in Part XV, the definition of the term, including the provisos, must be treated as part of Part XV.

[37] I would therefore answer questions 1, 2 and 3 in favour of TNB, that is, in the negative. But a decision in favour of TNB on those questions does not mean, as was submitted on behalf of TNB, that this appeal should be allowed. Although the door is not closed to TNB to question the validity of the rates claimed by MDD, there still remains to be considered the Court of Appeal's decision, which I have set out, on the estoppel question, which depends on the agreement of MDD with TNB to abide by the decision of the tribunal, on the basis of which the learned trial judge dismissed MDD's claim. To succeed in the appeal, it is necessary for TNB not only to be able to cross the threshold but also to justify as sustainable the cause that it carries across.

[38] Before proceeding to deal with the Court of Appeal's decision on the estoppel question, I have to state that it has been contended on MDD's behalf that there was no such agreement. As I said, it was a finding of fact by the learned trial judge that there was such an agreement. The Court of Appeal also accepted that there was such an agreement. This may be seen from this statement at p 50 of the typescript of the judgment. 'The amended bills were issued due to the arrangement and agreement between the parties to follow the decision of the said tribunal in Case 1 of 1994'. And after looking at the documentary evidence pertaining to the negotiations I see no reason to disturb these concurrent findings of fact.

[39] The Court of Appeal's decision, as I said, relied on *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58. By way of explaining what the case was essentially about and what was decided, I need only reproduce the headnote to the report, in which Holding (1) is not relevant to the Court of Appeal's decision:

The respondent board had contracted to supply electricity to the appellants. By mistake it had considerably undercharged the appellants and they claimed the amount of $84,624.01 cents from the appellants. The High Court gave judgment in favour of the board, the learned trial judge holding that the board was not estopped from claiming the amount although the appellants had utilised the accounts rendered by the board for the purpose of costing their products. The appellants appealed to the Federal Court.

Held, dismissing the appeal:

(1) the cases of estoppel by negligence are associated with those cases in which the silence of one under a legal duty to speak or act is regarded as a representation and it is a breach of that duty which is relied upon as creating an estoppel. The doctrine of estoppel by negligence however has no application to the present case because there was an express representation by the servant or agent on behalf of the representor;

(2) the plea of estoppel by representation cannot be pleaded against a public corporation on which there is imposed a statutory duty to carry out certain acts in the interest of the public;

(3) such public corporation cannot indirectly do, by placing itself under the disability of estoppel, what it could not have directly done by reason of statutory prohibitions;

(4) the Electricity Act constituting the Board was founded not so much on considerations of trade as for the benefit of the public in general. The Board had a statutory duty to perform to assess the appellants for rates in accordance with the prescribed tariff for electricity actually supplied and the appellants had a corresponding duty to pay at the scheduled rates for electricity energy consumed. To waive the payment at scheduled rates is prohibited by the doctrine of ultra vires. If the plea of estoppel is allowed, the scheduled rates due in respect of the actual amount of electric energy supplied would be indirectly remitted, which the Board could not by any act directly remit. To allow the plea of estoppel would therefore be nullifying the statutory provisions of the Act.

[40] As may be seen, the reason why estoppel by representation was not allowed to be pleaded against the Lembaga Letrik Negara, a public corporation, was because to allow it would amount to waiving payment of the amount undercharged, whereas the waiver was prohibited by the doctrine of ultra vires because it would be to indirectly remit statutory rates which the Lembaga did not have the power to remit.

[41] Contrary to the opinion of the Court of Appeal, in my judgment it was not ultra vires the LGA for MDD to agree to abide by the decision of the tribunal in determining the rate for TNB's holding. To determine the rate it was necessary to determine the annual value. The LGA does not lay down any particular medium or route to be used or taken for determining the annual value. MDD in fact resorted to a professional valuer to determine the annual value of TNB's holding. The dispute that subsequently arose centred on the application of proviso (b) to the definition of 'annual value'. It was a question that was going to arise and be decided by the tribunal in Case 1 of 1994. On the answer to the question and the proper application of the answer to the case of TNB's holding depended the correct determination of the annual value and the annual rate for the holding. I cannot agree that it was prohibited by the doctrine of ultra vires for MDD to agree to adopt a particular course of action to arrive at the correct annual value and annual rate. I do not see what provision of the LGA would, as the Court of Appeal said, be nullified by the agreement. The agreement was not to reduce the amount of the rate that TNB was bound to pay but was to arrive at the correct amount. If MDD was bound, had TNB made written objection to the annual value and annual rate originally determined by MDD, to consider TNB's grounds of objection and to arrive at a considered decision on the objection, I cannot see that MDD was prohibited at the outset to determine the proper annual value and annual rate through negotiations with TNB, thereby avoiding an objection and a subsequent appeal. As I said, the LGA does not provide any particular medium or route for determining the annual value and yearly rate. The negotiations that the parties entered into and the agreement reached in this case were perfectly in order legally and I agree with the learned trial judge that MDD should not renege on the agreement. The Court of Appeal mentioned the fact that the negotiations did not result in a written agreement duly executed by the parties. But an agreement there was all the same to abide by the decision of the tribunal. The failure was in the implementation of the agreement to arrive at a determination of the annual value and annual rate acceptable to both parties, as to which side the blame for which lies on has not been made an issue in this appeal.

[42] I should mention that at the hearing of this appeal learned counsel for MDD invited us to hear his argument that, even applying proviso (b) to the definition of 'annual value', the annual value and annual rate determined by MDD originally for TNB's holding were correct. This was objected to by learned counsel for TNB on the principal ground that the question was not one on which leave to appeal had been granted, nor was one that had been considered by the High Court or the Court of Appeal, and therefore ought not to be considered by us. After hearing submissions relating to the objection, we declined the invitation of MDD's counsel to hear his submission on the question.

[43] I would therefore answer questions 4, 5 and 6 in favour of TNB, that is, questions 4 and 6 in the affirmative and question 5 in the negative, and accordingly allow this appeal with costs here and in the Court of Appeal and set aside the orders of the Court of Appeal, except the order dismissing with no order as to costs TNB's appeal on its counterclaim. The resulting position would be that, as at the High Court, MDD's action stands dismissed.

[44] Since TNB succeeds in this appeal on the first six questions, there is no necessity to answer the rest of the questions, which are questions on subsidiary issues on which TNB hoped to succeed in the appeal.

[45] Notwithstanding that MDD's claim stands dismissed, the correct rate to be imposed on TNB's holding and to be paid by TNB as from 1 July 1991 has still to be determined. TNB's counsel has suggested that the rate should be that in MDD's bill dated 5 February 1992, which was RM479,550, based on an annual value of RM9,591,000. I am unable to accede to that suggestion because in my view that bill was merely a provisional bill issued so that, pending negotiations, TNB would at least pay something. I think that this court is not in a position in the circumstances of this appeal to decide what the rate should be. I agree with the learned trial judge that the determination of the correct rate should be done by the statutory process, because I cannot think of any other way in which it could be done. It may be too much to hope that the parties would arrive at an agreed figure — which in my judgment they could legally do — perhaps by continuing with the negotiations from where they left off.

[46] TNB has been paying the rate at RM400,000 per year from 1 July 1991. As TNB, by its counsel's suggestion, has impliedly volunteered to pay RM479,550, I would order that, pending the determination of the correct rate, the annual rate for TNB's holding as from 1 July 1991 be RM479,550.

[47] The learned President, the learned Chief Judge (Malaya) and my learned brother Nik Hashim Nik Ab Rahman FCJ have read this judgment in draft and have expressed their agreement with it.

Hashim Yusoff FCJ (delivering the dissenting judgment):

[48] We heard this appeal and reserved our judgment to be given at a later date. We do so now.

[49] Eleven questions were originally posed before us for determination in this appeal as follows:

(1) Whether the failure by the applicant ('the ratepayer') to invoke the

objection and appeal procedure under the *Local Government Act* 1976 ('the Act') is fatal, where the ratepayers's complaint is that the new rates and assessments and the amended assessments are ultra vires the Act?

(2) Whether the ratepayer is precluded from raising the defence that the new rates and assessment are ultra vires the Act (and therefore of the arrears) as a defence to a suit by the rating authority under s 156 of the Act to recover the so-called arrears of rates as a debt?

(3) Whether the ratepayer is precluded from exercising the right of collateral challenges to the vires or legality of the new amended valuation and rates in proceedings brought to enforce the new rates?

(4) Whether the doctrine of estoppel can be invoked against a local authority as the relevant rating body, arising out of an agreement with the ratepayer to abide by the decision of the Land Tribunal under art 156 of the Federal Constitution as to the proper rates payable, so that the rating authority would not be entitled to resile from that agreement?

(5) Whether it would be an act of ultra vires for a rating authority to enter into an agreement with a ratepayer (a public body) to abide by the decision of the Land Tribunal under art 156 of the Federal Constitution as to the rates payable?

(6) Whether the doctrine of legitimate expectation applies to preclude the local authority from resiling from its agreement with the ratepayer, being itself a public body, to abide by the decision of the said Land Tribunal and in the interim to withhold enforcement of the new rates and be paid an interim sum as rates?

(7) Whether, independent of the agreement between the local authority and the ratepayer to abide by the decision of the said Land Tribunal, the local authority is entitled to recover ordinary rates from the ratepayer (given its true legal character and status in law) or is it confined only to recover 'contribution-in-aid of rates' under art 156 of the *Federal Constitution* to be determined by a Land Tribunal?

(8) Whether a rating authority could sue under s 156 of the Act to recover on assessment bills that have been cancelled and/or replaced by amended or replacement bills formally issued by itself?

(9) Whether the term 'arrear' in s 156 of the Act on which, a rating authority is entitled to sue and recover as a debt must necessarily mean or refer in law to the current and/or replacement assessment bills remaining unpaid and not any previous cancelled or replaced bills?

(10) Whether the rating period of 1991–1996 on which the claim was based could be extended to recover rates indefinitely (as done by amendment

to the statement of claim at the trial) on the same valuation list in spite of the statutory obligation on the part of the rating authority to do a periodic five year revision of valuation under s 137(3) read with s 137(2) of the Act?

(11) Whether a suit under s 156 of the Act by a rating authority to recover arrears of rates would be caught by the *Limitation Act* 1953 to preclude recover outside the six year period under s 6(1)(d) of the Limitation Act 1953?

[50] At the outset, learned counsel for the appellant informed the court that he did not intend to proceed with question No 7.

BACKGROUND FACTS

[51] The facts of this case are sufficiently set out in the grounds of judgment of the Court of Appeal pp 2–4 of the appeal record (ikatan teras) and I do not propose to reproduce them here.

[52] The main dispute between the parties centres around the issue whether 'plant and machinery' in the appellant's power station should be included in the 'annual value' under s 2 of the Local Government Act 1976 ('the Act'). Besides that there are also several other issues being argued upon.

[53] The first issue is regarding the fact that the respondent did not lodge any objection to the appellant and did not appeal subsequently to the High Court by way of originating motion pursuant to s 144(3) and s 145(1) of the Act, which provide as follows:

Section 144(3):

> Any person aggrieved by the amendment of the Valuation List or any of the grounds specified in section 142 may make objection in writing to the local authority not less than ten days before the time fixed in the notice and shall be allowed an opportunity of being heard in person or by an authorised agent.

Section 145(1):

> Any person who having made an objection in the manner prescribed by section 142 and 144 is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion:
>
> ...
>
> (2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.

A ...

(4) Every such appeal shall be heard before the High court whose decision on questions of fact shall be final and conclusive.

(5) From the decision of the High Court either party may appeal on
B questions of law to the Supreme Court whose decision shall be final and conclusive.

[54] Section 144(1) reads:

C Where by reason of —

(a) ... any rateable holding has been insufficiently or excessively valued ...;

the Valuation Officer may at any time amend the Valuation List accordingly and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended.
D

[55] Learned counsel for the appellant submitted that the appellant's failure to follow the internal procedure of protest and appeal should not be fatal and that the appellant could still ask for a review of the valuation on the ground
E that it was not done properly. In other words, he submitted that the appellant should not be precluded for defending the civil suit filed by the respondent for the recovery of arrears of rate imposed on the Sultan Ismail Paka Power Station ('the said holding') amounting to RM31,625,000 due and owing as at 31 December 1996 and for the annual rate of RM6,150,000 for each year
F from 1 January 1997 until realisation less monies paid by the appellant in proposed part payments and interest at the rate of 8%pa.

[56] To support his argument, learned counsel referred to the case of *Wandsworth London Borough Council v Winder* [1984] 3 All ER 976 wherein
G Lord Fraser spoke in terms of the 'right of any individual to defend an action against him on the ground that he is not liable for the whole sum claimed by the plaintiff'. It was a case where the local authority had statutorily raised the rental on council flats and brought a claim against the tenant in the country court for arrears of rent. The tenant defended the claim on the basis that he
H was not in arrears because the local authority exceeded its statutory power in increasing the rentals and the notice of increase was accordingly null and void. The local authority argued that the tenant was precluded from raising the defence because he had not challenged the statutory increase by judicial review and indeed failed in this attempt because he was out of time. Lord
I Fraser rejected that argument by saying that 'He did not select the procedure to be adopted. He is merely seeking to defend proceedings brought against him by the appellants, In doing so he is seeking only to exercise the ordinary right of any individual to defend an action against him on the ground that he is not liable for the whole sum claimed by the plaintiff'.

[57] Learned counsel for the respondent however submitted that unless the rates are challenged in the specific manner laid down by Parliament in ss 144 and 145, the rates become due and payable by a ratepayer. He submitted that it must follow in law that any legal proceedings by a local authority to recover arrears in rates, the rate-payer has no real or credible defence to the claim and the local authority would be entitled to summary judgment under O 14 of the Rules of the High Court 1980 ('RHC') because there would be no triable issue.

[58] I am of the view that since there are specific provisions under s 145(1) and (2) of the Act to enable a dissatisfied ratepayer to appeal in the manner prescribed, any failure to comply with the same would necessarily preclude the ratepayer from resorting to any other method of appeal, like coming to court. The ratepayer should have exhausted his legal remedy provided by law first before he could come to court to seek his redress. I also do not agree with the argument that the appellant is only exercising his right to defend proceedings brought against him by the respondent. It is simply because of the appellant's failure in the first place to pay up its arrears of rates that necessitated the respondent's action to proceed by way of court proceedings to recover its claim. So it would not be fair for the appellant to say that it is only defending a claim against it where it could have appealed to the respondent against the said valuation as is provided by the law.

[59] If any ratepayer were to act in the same manner as the appellant then it would lead to the courts being flooded with recovery suits by the various local authorities against their defaulting ratepayers for recovery of arrears. It may then result in the local authorities to not be in a financial position to provide general services like maintenance of hospitals, roads, garbage collection and so forth. That cannot be the intention of Parliament.

[60] The case of *The Mayor, Aldermen and Councillors of the Metropolitan Borough of Stepney v John Walker & Sons Ltd* [1934] AC 365 lends support to my view above. That case was a rating case which involved the interpretation of the Rating and Valuation (Apportionment) Act 1928 of England. A passage from the judgment of Lord Warrington is particularly relevant to our case:

> As to question (11). In the Act of 1869 a complete and easily understood code is laid down for the purpose of enabling objections, either by a ratepayer or other specified persons, to acts of the Assessment Committee or the rating authority to be considered and dealt with either by those bodies themselves or, in case of necessity, by judicial authority. In the present case all necessary notices were given so that the respondents were at all times in a position effectually to obtain relief under the statutory provisions. It is difficult to understand why the respondents deliberately, as it is said abstained from resorting to the statutory provisions. They

A say they did so because until the decision of Quarter Sessions in reference to the Special List under the Act of 1928 had been set aside, an appeal in respect of the Quinquennial List would probably have failed. But, assuming that to be so, it can afford no excuse for having abstained from taking steps which would at least have kept their claims alive. In fact it was not until April, 1932, long after the
B Quinquennial List had come into force, that they raised their present claim.

In my opinion this is one of those cases in which the Legislature has provided suitable means whereby persons aggrieved by the action of the rating authorities can obtain the removal of that grievances, and I am of the opinion that when that is so it must be inferred that those means are intended to be exclusive: see *Rex v City of London Assessment Committee* (1). On this point I agree with Romer LJ. We
C were told that it is hard that for the rest of the Quinquennial period the respondents will be deprived of the benefits of the Acts of 1928 and 1929. The answer is that any hardship is the result of their own failure to avail themselves of the procedure open to them under the statute.

D

[61] Provisions identical to ss 144 and 145 of the Act found in its predecessor statute, the Town Board Enactment of FMS (Cap 137) were answered by SM Yong J in the case of *Yee Seng Rubber Co Sdn Bhd v The Commissioner of Kuala Lumpur* [1972] 2 MLJ 21. In that case the ratepayer
E had appealed to the High Court against the annual value of its holdings but only paid into court the amount of the rate appealed against some 3½ months after the due date. Justice SM Yong observed:

One can well understand why this condition (paying money into court) was
F imposed by the legislature. Frivolous appeals are often filed for the purpose of delaying payment of rates which the Town Board needs for running its public services of the towns and its administration. This condition was obviously designed to prevent this mischief. It is also common knowledge that such appeals would not be heard for a considerable period of time, sometimes for months if not years.

G The question before the court is: where jurisdiction is given to a court by statute, upon certain terms or conditions, would non-compliance thereof prevent such jurisdiction from arising? After consulting various authorities, including the following I came to the conclusion that it would.

The court's conclusion was as follows:

H

I hold that s 44(i) is a mandatory provision which goes to the jurisdiction of the court. It is not directory and cannot be waived.

I further hold that the court's jurisdiction to entertain appeals from the Board of the Federal Capital of Kuala Lumpur now known as the City of Kuala Lumpur was
I given by statute — Town Board Enactment Cap 137 — upon certain terms and conditions as prescribed by s 44(i) and that unless these terms or conditions are complied with the court's jurisdiction does not arise.

[62] I find that the Court of Appeal was right in holding that the sum specified in the notice dated 13 March 1991 issued by the respondent was final and conclusive because the appellant failed to appeal in the manner expressly provided for in ss 144 and 145 of the Act.

[63] The other issue is whether 'plant and machinery' should be included or not in assessing the 'annual value' under s 2 of the Act.

[64] Learned counsel for the appellant submitted that under s 2 of the Act, it exempts machinery producing 'articles'. He submitted that electricity is an 'article'. Reference was made to the Factories and Machinery Act 1967 where under s 3, it defines 'articles' to include electricity (see the case of *Majlis Perbandaran Seberang Perai v TNB* [2005] 1 MLJ (FC)). It was submitted that the respondent's valuation which took into account the value of machinery would therefore be null and void. That being so, therefore the appellant could go by way of review under O 53 of the Rules of the High Court 1980 and not by way of objection under s 144, and then appeal under s 145 of the Act.

[65] To counter this argument, learned counsel for the respondent responded by submitting that it was open to the appellant to go either by appealing under s 145 of the Act or go by judicial review under O 53 of the Rules of the High Court. But he submitted, in this case the appellant did neither. So the respondent had to take court proceedings to recover the arrears under s 147 of the Act. Therefore the appellant would have to face the suit. If the appellant had objected and appealed the Court of Appeal could then have decided on the issue whether the respondent valuation was ultra vires or not.

RE: ISSUE ESTOPPEL

[66] Learned counsel for the appellant also submitted that there was an agreement between the parties, to resolve the controversy over the 'annual value' ie whether the power plant machinery was to be included or not in the valuation, by deciding to abide by the decision of the Land Tribunal which was specifically set up by the government to decide on the rates payable by the appellant in five local authorities around the country. Learned counsel therefore submitted the respondent is estopped because of the continued negotiations between the appellant and the respondent over the issue of valuation.

[67] Learned counsel for the respondent then responded by referring to the grounds of judgment of the Court of Appeal at p 50 as follows:

> The amended bills were issued due to the arrangement and agreement between the parties to follow the decision of the said Tribunal in Case 1 of 1994. I have earlier held that such an arrangement or agreement is prohibited by the doctrine of ultra vires and hence any consequence of that would also be bad in law. To admit estoppel under such circumstances would have the effect of nullifying the statutory provisions of the Act. Further, the evidence showed that although prolonged negotiations did take place between the parties for a substantial period of time, the negotiations did not result in a written agreement duly executed by the parties. Be that as it may, it must be remembered that an estoppel is only a rule of evidence and could not avail to release the respondent from an obligation to obey the Act nor could it enable the respondent to escape from statutory obligation to pay the rate imposed by the appellant. The respondent's liability as a ratepayer is not a private debt but a public obligation.

[68] It would appear from the chronology of events, that the various meetings and correspondence between the appellant and the respondent did not end up in any agreement being drawn up. At most, what was agreed between the parties was regarding interim payments only to be paid by the appellant and to leave it to the Land Tribunal to study the matter regarding the 'plant and machinery'.

[69] Further, according to the witness statement of Hj Abdul Aziz bin Awang at the trial in the Kuala Lumpur High court, he was the secretary of the respondent at the relevant time and was handling the file pertaining to this case. According to his statement, he said that the appellant and the respondent after two meetings, came to an arrangement whereby both parties essentially agreed to a part payment of the assessment that was due and payable by the appellant to the respondent pending the outcome of the said Land Tribunal's decision. That both parties agreed to review and consider the Land Tribunal's decision, but certainly did not agree to be bound by it.

[70] In *Southend-on-Sea Corporation v Hodgson (Wickford) Ltd* [1961] 2 All ER 46, Lord Parker CJ opined at p 48, that:

> estoppel cannot operate to prevent or hinder the performance of a statutory duty or the exercise of a statutory discretion which is intended to be performed or exercised for the benefit of the public or a section of the public.

[71] Thus a corporation on which there is imposed a statutory duty to carry out certain acts in the interest of the public cannot preclude itself by estoppel in pair from performing its duty and asserting legal rights accordingly (see *Maritime Electric Co Ltd v General Dairies Ltd* [1937] AC

610). This principle of estoppel as laid down in the *Maritime*'s case was referred to with approval by the Federal Court in the case of *Public Textiles Bhd v Lembaga Letrik Negara* [1976] 2 MLJ 58.

[72] Based on the above I find that YA Mohd Ghazali JCA in delivering the judgment of the Court of Appeal had not erred when in his judgment at p 32, His Lordship said as follows:

> I am of the view that the doctrine of estoppel cannot apply to the fact of the case before him. The rates imposed by the appellant vide the said Notice has become due and payable as from 1 July 1991 under the Act and to admit estoppel against the appellant, it being a public authority, would have the effect of nullifying the provisions of the Act. To admit estoppel against a public authority, the court must first of all determine the nature of the obligation imposed by the Act on the public authority and then consider whether the admission of an estoppel under the circumstances of the case would nullify the statutory provisions.

[73] In the case of *Majlis Perbandaran Seberang Perai v TNB*, the appeal against the judgment of the High Court directly to the Federal Court was by virtue of s 145(5) of the Local Government Act which provides that either party may appeal but only on questions of law. In that case the Federal Court allowed the application for leave to appeal on the following questions of law:

(a) whether 'electricity' is an article for the purpose of determining the annual value of a power station in accordance with the definition of 'annual value' in s 2 of the Local Government Act 1976 ('the LGA');

(b) whether the machinery referred to in the proviso at (b) to the definition of 'annual value' in s 2 of the LGA refers to machinery that is not integrated with the 'land' and/or 'building' as defined in s 2 of the LGA; and

(c) whether the generating plant and machinery present in a power station are structure within the definition of 'building' in s 2 of the LGA and accordingly, are to be taken into account in determining the annual value of the said power station.

[74] The issue of failure to comply with the express statutory provisions of ss 144(3) and 145(1) of the Act was not touched upon by this court in that case. Nor was the issue of estoppel or judicial review discussed therein.

[75] For the above reasons, I would therefore answer questions 1, 2 and 3 in the affirmative. In view of that I feel the need to answer the remaining

questions becomes irrelevant. I would therefore dismiss the appeal with costs.

Appeal allowed with costs here and below.

Reported by Kohila Nesan